

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

DAVID SIMONS,

Plaintiff,

-against-

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

**ORDER ADOPTING REPORT  
AND RECOMMENDATION**

17-CV-04844 (PMH) (AEK)

PHILIP M. HALPERN, United States District Judge:

David Simons (“Plaintiff”), proceeding *pro se*, initiated this action seeking review of a final administrative decision rendered by the Commissioner of Social Security (“Commissioner”) denying his application for a waiver of an overpayment of benefits. (Doc. 1). On July 25, 2017, Judge Román, before whom this matter proceeded before being transferred to this Court on April 13, 2020, referred this matter to Magistrate Judge Smith. (Doc. 5). On May 23, 2018, the Commissioner filed a motion for judgment on the pleadings. (Doc. 17; *see also* Doc. 13; Doc. 18). Plaintiff filed a memorandum of law in opposition to the Commissioner’s motion on October 22, 2018 (Doc. 24), and the motion was briefed fully with the filing of the Commissioner’s reply brief in further support of his motion for judgment on the pleadings on December 7, 2018 (Doc. 29).

Magistrate Judge Krause,<sup>1</sup> in a Report and Recommendation (“R&R”) dated September 15, 2021, “recommend[ed] that the Commissioner’s motion be GRANTED, and that judgment be entered in favor of the Commissioner.” (Doc. 43).

Under 28 U.S.C. § 636(b)(1), the parties have fourteen days after being served with a copy of a report and recommendation within which to serve and file written objections “as provided by rules of court.” *See also* Fed. R. Civ. P. 72(b). If the report and recommendation is served by mail,

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<sup>1</sup> This matter was reassigned from Magistrate Judge Smith to Magistrate Judge Krause on October 16, 2020.

the parties have an additional three days to serve and file objections, resulting in a total of seventeen days. Fed. R. Civ. P. 6(a), (d). Accordingly, because a copy of the R&R was mailed to Plaintiff at the address listed on the docket on September 15, 2021, objections were required to have been served and filed on or before October 4, 2021. No objections have, however, been filed in this matter.

Where, as here, “no objections to a report and recommendation are made, the Court may adopt the report if there is no clear error on the face of the record.” *Roundtree v. Comm’r of Soc. Sec.*, No. 19-CV-07347, 2021 WL 431452, at \*1 (S.D.N.Y. Feb. 8, 2021) (quoting *Rivera v. Comm’r of Soc. Sec.*, 728 F. Supp. 2d 297, 303 (S.D.N.Y. 2010)).

Upon a careful and complete review, the Court finds no clear error in Magistrate Judge Krause’s thorough and well-reasoned analysis, and adopts the R&R in its entirety for the reasons set forth therein. Consequently, the Commissioner’s motion for judgment on the pleadings is GRANTED. The Clerk of the Court is respectfully directed to terminate the motion sequence pending at Doc. 17, mail a copy of this Order to Plaintiff and the address listed on the docket, enter judgment accordingly, and close this case.<sup>2</sup>

**SO ORDERED:**

Dated: White Plains, New York  
October 8, 2021

  
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PHILIP M. HALPERN  
United States District Judge

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<sup>2</sup> If the Court did not grant the Commissioner’s motion for judgment on the pleadings, it would, alternatively, dismiss the action under Federal Rule of Civil Procedure 25(a)(1) because the Commissioner served a statement noting Plaintiff’s death and no motion for substitution was made within ninety days thereafter (*i.e.*, August 16, 2021).